



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2015-0813; FRL-9940-93-Region 10]

Approval and Promulgation of Implementation Plans; Washington; Removal of Obsolete Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to remove outdated rules in the Code of Federal Regulations (CFR) for the State of Washington because they are unnecessary or obsolete. The EPA is also clarifying regulations to reflect updated citations and more recent air quality monitoring data. This direct final action makes no substantive changes to the State Implementation Plan (SIP) and imposes no new requirements.

DATES: This rule is effective on **[Insert date 60 days after date of publication in the Federal Register]**, without further notice, unless the EPA receives adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2015-0813, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, (206) 553-0256, hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” are used, it is intended to refer to the EPA.

I. Introduction

This action is being taken pursuant to Executive Order 13563 – *Improving Regulation and Regulatory Review*. It is intended to reduce the number of pages in the CFR by identifying those rules in 40 CFR part 52, subpart WW, for the State of Washington that are duplicative, outdated, or obsolete. These rules no longer have any use or legal effect because they have been superseded by subsequently approved SIP revisions. This action also amends certain rules by revising outdated citations and updating provisions based on more recent ambient air quality monitoring data. One aspect of the EPA’s action removes historical information found in the “Original Identification of plan” section in 40 CFR 52.2477. This section is no longer necessary because the EPA promulgated administrative rule actions to replace these paragraphs with summary tables in 40 CFR 52.2470 (78 FR 17108, March 20, 2013). These summary tables

describe the regulations, source-specific actions, and non-regulatory requirements which comprise the SIP.

II. Removal of Obsolete or Unnecessary Rules and Clarifications to Certain Rules

The EPA reviewed the following regulations and found that they should be removed or revised for the reasons set forth as follows:

A. Section 52.2471 Classification of Regions.

In a submission received on September 22, 2014, included in the docket for this action, the Washington Department of Ecology (Ecology) reviewed air quality monitoring data for nitrogen dioxide (NO₂) and ozone with respect to classifying regions under 40 CFR 51.150. That section classifies regions based on air quality information for purposes of establishing requirements for emergency episode plans. The air quality information in 40 CFR 52.2471 regarding classification of regions in the State of Washington was last updated by the EPA on June 5, 1980 (45 FR 37836). Ecology confirmed that the classifications in § 52.2471 remain correct for NO₂ based on 2012-2014 monitoring data. Ecology also confirmed that the classifications for ozone remain correct for all Air Quality Control Regions in Washington, except one. Based on a review of 2012-2014 data, Ecology noted that the classification for the Washington portion of the Portland Interstate Air Quality Control Region is out of date. The EPA reviewed the 2012-2014 data used by Ecology, as well as more recent 2013-2015 data included in the docket for this action. We agree with Ecology's analysis that the Washington portion of the Portland Interstate Air Quality Control Region should be reclassified to Priority III based on more recent air quality monitoring data. The reclassification of the Washington portion of the Portland Interstate Air Quality Control Region from Priority I to Priority III will have no

significant impact on the SIP because the current emergency episode plan covers the entire state and remains unchanged in the SIP since the EPA's last approval (58 FR 4578, January 15, 1993).

The EPA also reviewed air quality monitoring data for carbon monoxide. Concentrations of carbon monoxide in ambient air have plummeted in the thirty-five years since the EPA's last update to the classifications in § 52.2471, primarily due to improved Federal engine standards for motor vehicles. The highest 8-hour concentration observed at all monitors in Washington from 2013-2015 was 2.4 parts per million (ppm), which is well below the 8-hour carbon monoxide National Ambient Air Quality Standard (NAAQS) of 9 ppm and well below the Priority I classification level of 12 ppm. Similarly, the highest 1-hour concentration observed at all monitors in Washington from 2013-2015 was 4 ppm, which is well below the 1-hour carbon monoxide NAAQS of 35 ppm and well below the Priority I classification level of 48 ppm. The EPA is therefore reclassifying all carbon monoxide areas in Washington as Priority III, the lowest classification level. As discussed above, this update to the classification levels will have no significant impact on the SIP because the current emergency episode plan covering the entire state remains unchanged in the SIP since the EPA's last approval. At this time, we are not assessing the classification levels for other pollutants (particulate matter and sulfur dioxide) because the data analysis required to do so, including consideration of any potential exceptional events, is beyond the scope of this action.

B. Section 52.2472 Extensions.

This section extended the attainment date for the Spokane and Wallula particulate matter (PM₁₀) nonattainment areas until December 31, 1995 (60 FR 47280, September 12, 1995). In subsequent actions, the EPA redesignated both of these areas to attainment of the PM₁₀ NAAQS

(70 FR 38029, July 1, 2005 and 70 FR 50212, August 26, 2005), making this section obsolete. The EPA is therefore removing this section.

C. Section 52.2473 Approval status.

This section, last updated February 23, 1982 (47 FR 7840), is out of date. The second sentence addresses the geographic applicability of the regulations in the Washington SIP. Applicability is now addressed in the tables in § 52.2470, and this sentence is out of date and is being removed (see 79 FR 59653, October 3, 2014). The fourth sentence describes ozone-related reasonably available control technology (RACT) requirements under the 1977 Clean Air Act (CAA). This sentence is being removed because the EPA subsequently approved Washington SIP revisions for the ozone NAAQS under the requirements of the 1990 CAA (see 40 CFR 52.2470(c) and (e)). Similarly, the fifth sentence in this section is also out of date and is being removed. It describes the requirements of the emission offset interpretive rule as it applies to permitting new sources in a nonattainment area, published January 16, 1979 (44 FR 3274). This concern became obsolete when the EPA approved Washington Administrative Code (WAC) 173-400-091 “Voluntary limits on emissions” and WAC 173-400-112 “Requirements for new sources in nonattainment areas” (60 FR 28726, June 2, 1995). More recently, the EPA approved updates to Washington’s nonattainment new source review permitting program as meeting all CAA requirements on November 7, 2014 (79 FR 59653).

D. Section 52.2474 General requirements.

This section, addressing public availability of emission data, is out of date (40 FR 55334, November 28, 1975), and is being removed. On October 3, 2014, the EPA approved WAC 173-400-175 “Public Information” as meeting the requirements of the CAA, including making ambient air quality data and emission data available to the public (79 FR 59653). For a full

discussion, please see the proposed approval of WAC 173-400-175 (79 FR 39351, 39357, July 10, 2014).

E. Section 52.2475 Approval of plans.

This section is no longer necessary because the EPA replaced the historical information contained in this section with summary tables in § 52.2470 (78 FR 17108, March 20, 2013). These summary tables describe the regulations, source-specific actions, and non-regulatory requirements which comprise the SIP, including a history of attainment plan and visibility protection SIP submittals. The EPA reviewed § 52.2475 to verify that all relevant historical information in this section is contained in § 52.2470. The EPA is therefore removing § 52.2475.

F. Section 52.2477 Original identification of plan section

Paragraphs (b) and (c) of § 52.2477, originally designated as 40 CFR 52.2470(b) and (c), contain historical information about the EPA's approval actions for the Washington SIP which occurred from January 28, 1972 until March 20, 2013. On March 20, 2013, the EPA reorganized the Identification of plan section (§ 52.2470) for subpart WW by listing and summarizing Washington's currently approved SIP requirements in § 52.2470(a) through (e) (78 FR 17110). Paragraphs (b) and (c) of § 52.2477 are being removed because the EPA has determined that it is no longer necessary to codify the information found in these paragraphs. Paragraph (a) of § 52.2477 is being amended to state that this historical information will continue to be made available in the CFR annual editions, title 40, part 52 (years 1996 through 2012). These annual editions are available on line at the following url address:

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

G. Section 52.2495 Voluntary limits on potential to emit

This section discusses the mechanisms for issuance of voluntary limits on potential to emit in Washington. In 1995, the EPA approved this regulation (with a state effective date of September 20, 1993) as meeting the requirements for Federally-enforceable state operating permit programs set forth in 54 FR 27274 (June 28, 1989), with respect to criteria pollutants and pollutants regulated under the PSD program under section 110 of the CAA (as part of the SIP) and with respect to hazardous air pollutants under section 112(l) of the CAA (as part of Ecology's CAA section 112 program and not as part of the SIP). See 60 FR 9805 (proposed action); 60 FR 28726 (final action). Subsequent to that approval, Ecology made minor changes to WAC 173-400-091. The EPA approved these minor changes to the Washington SIP in 2014 with respect to criteria pollutants and pollutants regulated under the PSD program (referred to as "regulated NSR pollutants"). See 79 FR 39351, 39354 (July 10, 2014) (proposed action); 79 FR 59653 (final action). The 1993 version of WAC 173-400-091 continues to be the approved version for purposes of section 112(l). The EPA is amending § 52.2495 to make it clear that WAC 173-400-091 remains approved under both sections 110 and 112(l) of the CAA, and that the SIP-approved version is identified in § 52.2470(c). The EPA is also deleting the reference in § 52.2495 to 40 CFR 51.104(e) because that paragraph has been repealed.

III. Final Action

The EPA has determined that the above referenced rules should be removed or revised at this time. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[Insert date 60 days after date of publication in the Federal Register]** without

further notice unless the EPA receives adverse comment by [**Insert date 30 days after date of publication in the Federal Register**]. If the EPA receives adverse comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Orders Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided

state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporate by reference, Intergovernmental relations, Particulate matter, Reporting and Recordkeeping requirements.

Dated: December 21, 2015.

Michelle L. Pirzadeh,
Acting Regional Administrator,
Region 10.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW – Washington

2. Section 52.2471 is revised to read as follows:

§ 52.2471 Classification of regions.

The Washington plan was evaluated on the basis of the following classifications:

Air quality control region	Pollutant				
	Particulate matter	Sulfur oxides	Nitrogen dioxide	Carbon monoxide	Ozone
Eastern Washington-Northern Idaho Interstate	I	IA	III	III	III
Northern Washington Intrastate	II	III	III	III	III
Olympic-Northwest Washington Intrastate	II	II	III	III	III
Portland Interstate	I	IA	III	III	III
Puget Sound Intrastate	I	IA	III	III	I
South Central Washington Intrastate	I	III	III	III	III

§ 52.2472 [Removed and Reserved]

3. Section 52.2472 is removed and reserved.

4. Section 52.2473 is revised to read as follows:

§ 52.2473 Approval status.

With the exceptions set forth in this subpart, the Administrator approves Washington's plan for the attainment and maintenance of the national standards under section 110 of the Clean

Air Act. Furthermore, the Administrator finds that the plan satisfies all requirements of part D, title 1, of the Clean Air Act.

§§ 52.2474 and 52.2475 [Removed and Reserved]

4. Sections 52.2474 and 52.2475 are removed and reserved

5. Section 52.2477 is revised to read as follows:

§ 52.2477 Original identification of plan section.

(a) This section identified the original “Air Implementation Plan for the State of Washington” and all revisions submitted by Washington that were Federally approved prior to March 20, 2013. The information in this section is available in the 40 CFR, part 52, Volume 3 of 3 (§§ 52.2020 to End) edition revised as of July 1, 2012.

(b) [Reserved]

(c) [Reserved]

6. Section 52.2495 is revised to read as follows:

§ 52.2495 Voluntary limits on potential to emit.

(a) Terms and conditions of regulatory orders covering regulated NSR pollutants (as defined in 40 CFR 52.21(b)), issued pursuant to WAC 173-400-091 “Voluntary limits on emissions” and in accordance with the provisions of WAC 173-400-091, WAC 173-400-105 “Records, monitoring, and reporting,” and WAC 173-400-171 “Public involvement,” shall be applicable requirements of the Federally-approved Washington SIP for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP. Such regulatory orders issued pursuant to WAC 173-400-091 are part of the Washington SIP and shall be submitted to EPA Region 10 in accordance with the requirements of 40 CFR 51.326. The EPA-approved provisions of the WAC are identified in 40

CFR 52.2470(c).

(b) Terms and conditions of regulatory orders covering hazardous air pollutants (as defined in 40 CFR 63.2), issued pursuant to WAC 173-400-091 “Voluntary limits on emissions,” as in effect on September 20, 1993, and in accordance with the provisions of WAC 173-400-091, WAC 173-400-105 “Records, monitoring, and reporting,” and WAC 173-400-171 “Public involvement,” shall be applicable requirements of the Federally-approved Washington section 112(l) program for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of section 112.

[FR Doc. 2015-33177 Filed: 1/8/2016 8:45 am; Publication Date: 1/11/2016]